IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 55 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA
HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME TAX - Applicant(s)

Versus

ZAVERCHAND GAEKWAD LTD. - Respondent(s)

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Appearance :
MR MANISH R BHATT for Applicant(s) : 1,
NOTICE SERVED for Respondent(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 08/12/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE D.A.MEHTA)

1.The Income Tax Appellate Tribunal, Ahmedabad Bench “B” has referred the following question under section 256(1) of the Income Tax Act, 1961 (the Act) at the instance of the Commissioner of Income Tax:

> “Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding that the assessee is entitled to deduction holding that the assessee is entitled to deduction in respect of royalty paid to Enertrom Systems at the rate of 2% on the sale of Bellow Expansion joints?”

2.The assessment years are 1985-86 to 1987-88. Mr.B.B.Naik, the learned standing counsel appearing on behalf of the applicant has very

fairly invited attention to the fact that the Tribunal had relied upon its own order in case of assessee for assessment years 1982-83 to 1984-85, against which revenue had come up before this Court by way of Income Tax Reference No.300 of 1993. This Court has decided the said matter vide judgement dated 2/8/2005 and question No.1 in the said reference, which pertains to the same controversy, has been answered in favour of the assessee and against the revenue. In light of the aforesaid position, it is not necessary to set out the facts and contentions in detail.

3. In these circumstances, for the reasons stated in the judgement dated 2/8/2005 rendered in Income Tax Reference No.300 of 1993 between the same parties, the question referred is answered in affirmative i.e. in favour of the assessee and against the revenue.

4.The Reference stands disposed of accordingly. There shall be no order as to costs.

[D.A.MEHTA, J.]

[HARSHA DEVANI, J.]

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